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VISITABILITY DEFINED

*By Eleanor Smith,
president and founder of
Concrete Change, Atlanta Georgia.*

*This article was originally published in November
2003 for The Disability Rights Action Coalition.*

Visitability is a movement to change home construction practices so that virtually all new homes--not merely those custom-built for occupants who currently have disabilities--offer a few specific features that make the home easier for people who develop mobility impairments to live in and visit. Several people have asked for a more detailed definition, noting that the list of required features has not been identical in all Visitability legislation, handouts and other materials, and in some voluntary programs.

While the concept of Visitability is very simple, the definition has several interactive layers: **spirit, features, scope, and moment in history.**

First, the spirit of Visitability is as important as the list of features. That spirit says, it's not just unwise, but unacceptable that new homes continue to be built with gross barriers — unacceptable, given how easy it is to build basic access in the great majority of new homes, and given the harsh effects major barriers have on so many people's lives. These easily avoided barriers cause daily drudgery; unsafe living conditions; social isolation, and forced institutionalization. The appropriate ways to further basic access include, all actions short of violence — disseminating information; working to pass legislation; incentives (so long as they are moderate and don't undermine a tax base, impede general affordable housing, or undermine other Visitability efforts); voluntary efforts (so long as they are not programs producing few houses and at the same time forestalling legislation);

WHAT IS "VISITABILITY" IN VERMONT?

The concept behind the nationwide movement called "visitability" is a very simple one — all people should be able to visit the homes of all other people. In other words, homes should be accessible to persons with physical disabilities. This simple concept became a Vermont law in 2000. As is quite often the case in the legislative process, the actual law is not as simple as the original concept. The original version of the law included two important features that were not part of the final version.

One of the cornerstones of the "visitability" movement is for there to be a "zero-step" entrance to dwellings. Vermont's "visitability" standards (commonly referred to as Act 88), do not include this important accommodation for newly constructed single-family dwellings, though the originally proposed version included this requirement. The second feature that is not part of the final version of the Act is an enforcement/penalty provision. The original version had a clause that addressed a failure to comply with the regulations. Failure to comply with the Act, in the original version, could have resulted in a denial or delay in the issuance of a certificate of occupancy.

Robert Howe Assistant State Fire Marshall, Department of Public Safety, Division of Fire Safety, characterized Act 88 as it relates to single-family dwellings, as a self-certifying law. Advocates for "visitability" consider Vermont's law an "educational measure" rather than a measure to guarantee the production of housing with visitable features.

When the "visitability" law passed the Vermont General Assembly, it included the following legislative findings:

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street theater; advertising campaigns; civil disobedience; and others.

Second, the features list must be partly rigid and partly flexible. The inflexible features are:

- Wide passage doors
- At least a half bath/powder room on the main floor
- At least one zero-step entrance approached by an accessible route on a firm surface no steeper than 1:12, proceeding from a driveway or public sidewalk

No arguments are accepted that "We'll build the house so a ramp could be added later."

At least a half bath on the main floor now belongs as a non-negotiable feature, but it did not when the first Visitability legislation was passed in Atlanta in 1992. At that early time in the movement's history, and in the absence of precedents, passing a bill with a zero-step and door width requirements in private, single-family houses was just barely possible even without the bathroom requirement. Advocates balanced the obvious need for a main floor bathroom with the law of averages that nearly all new dwellings already include that feature.

Several additional features sometimes are included in Visitability initiatives (for example, reinforcement in bathroom walls and accessible placement of electrical controls.) If very low cost, they are good and appropriate. However, these additions must be flexible according to circumstance because they are so much less essential for survival than the three basic features, and each added feature elicits a set of objections and/or misconceptions to be addressed. If the strategy chosen involves enforceable legislation—which is the means by which the great majority of VISIBLE homes have been created to date-- the list of prioritized features must be short. Otherwise, passing a Visitability law is currently impossible. In voluntary efforts, more features can be included. For instance, the Georgia EasyLiving Home® voluntary certification program for private, open-market houses requires, besides the basics, also a full bathroom with designated maneuvering space and a bedroom on the main floor.

If people add to their own definition of Visitability advanced features such as a five-foot turning diameter in bathrooms, parking space requirements, a roll-in shower and so on, they are going beyond the scope of what is currently possible for rapid, broad application of Visitability, and we hope they will not use the term Visitability for their initiatives. We are not averse to pushing for those advanced features per se, to the extent that they do not pose a credible threat to general housing affordability. Rather, we are against using the term Visitability for additional features because that works against the reason

the Visitability movement has had some success—its extreme simplicity of content, rigorous prioritization, and insistence on application not just cogitation, speculative homes not special homes.

The scope of the dwellings covered and the time in history of a Visitability initiative, whether voluntary or legislative, are also relevant to defining the flexible, evolving Visitability movement. For instance, a legislative effort that required some access in even a small percent of private, single-family houses pushed the borders far in the 1992 Atlanta ordinance, whereas the 2000 Pima County AZ and the 2003 Bolingbrook IL ordinances expanded the borders in a major new way by covering ALL new houses, not just those with some sort of public perk. The Pima County ordinance requires only 2'8" doors, i.e., 30 inches of clear passage space, which is 2 inches less than required by other successful legislation. That was a necessary, intelligent compromise, in our view, since 30 inches is quite helpful (although not nearly as helpful as 32) and the Pima County law covers all houses-- a major, unique leap forward in 2000. That law was extremely hard for Arizona advocates to accomplish, barely passed in a 5 to 4 vote, and was sued twice, once on a national level that failed, and again in a local-level appeal, which also failed. Therefore the law stands, and has produced many thousands of VISIBLE homes. (The two lawsuits were generated and/or assisted by politically powerful housing industry organizations, specifically NAHB and the local Pima County Home Builders Association.)

The above history touches on the flexible part of scope as it affects features. However, a fixed part of acceptable (legislative) scope is that a legitimate law must contain an enforcement mechanism. We find problematic a document called a law but lacking an enforcement mechanism, so that in practice it is voluntary, not a law. We are very much in favor of voluntary initiatives, recommendations, and education campaigns as long as they are not called laws. When packaged in law-type formats, they tend to undermine other efforts to pass enforceable legislation.

On a smaller scale, any action as small as one person giving a Visitability handout to a builder, or advocating Visitability to a friend buying a new house, is a valuable part of the movement. The actions, large and small, of many thousands of participants are gradually reshaping how homes are built.

**The Vermont Fair Housing News contacted Ms. Smith for permission to reprint this article. She happily agreed, saying she would do anything to help spread the word about "Visitability". She suggested that we add the following update - As of 2007, more than 30,000 visible homes have resulted from visitability-type ordinances in Arizona, Texas, Illinois, Georgia, and elsewhere.*

- (1) People over 65 are the fastest growing sector of the American population and life expectancies continue to increase. Whether due to injury or age, there is a great likelihood for each of us, at some time in our life, to suffer a temporary or permanent condition that limits mobility or the ability to perform daily tasks of living.
- (2) The increased cost of constructing a residence with doorways wide enough to permit wheelchair access, electrical outlets reachable by a wheelchair-bound person, and bathroom walls reinforced to permit installation of grab bars is minimal, while the costs and disruption associated with retrofitting an existing home to be minimally accessible are substantial.
- (3) A residence that provides minimal accessibility offers the possibility of occupancy or visitation by a disabled person. An occupant of a home that has wide doorways and reachable outlets who becomes disabled, whether temporarily or permanently, may be able to remain at home and avoid or delay the great expense and emotional trauma of institutionalization.

To Vermont's credit, its "visitability" law is the only state law in the nation that sets forth some level of "visitability" in certain new, single family, non-subsidized residential construction. All other states that have visitability laws apply them only to subsidized housing¹.

Vermont's "visitability" law is found in Title 20 Chapter 174 §2907.

¹ There are 14 other states that have some type of visitability laws – FL, GA, TX, VA, MN, NM, KS, IL, OR, KY, PN, NJ, MI, OH. There are also a number of local ordinances in such places as Atlanta, GA; Pima County, AZ; Austin, TX; Escanaba, MI; Lafayette, CO and Toledo, OH.

For the purposes of 20 V.S.A. §2907(a), "residential construction" is defined as,

...new construction of one family or multi-family dwellings. "Residential construction" shall not include a single family dwelling built by the owner for the personal occupancy of the owner and the owner's family, or the assembly or placement of residential construction that is prefabricated or manufactured out of state.

Single dwelling "residential construction" that meets the Act's definition are homes built on speculation. The law that took effect July 2001 set five standards to be incorporated in these homes:

- 1) there must be at least one first floor exterior door that is at least 36 inches wide;
- 2) on the first floor, interior doors between rooms must be at least 34 inches wide or open doorways that are at least 32 inches wide with thresholds that are level, ramped or beveled;
- 3) interior hallways must be level and at least 36 inches wide
- 4) environmental and utility controls and outlets must be located at heights that are in compliance with standards adopted by the Vermont Access Board; and,
- 5) bathroom walls must be reinforced to permit attachment of grab bars.

Given the minimal cost and clear benefits of "visitability," all Vermonters should consider incorporating "visitability" standards when building or remodeling. "Zero-step entrances" can already be seen on many houses today as people add ramps so family and friends can access their homes. For more information visit www.visitability.org.

CAUGHT IN THE ACT

Vermont Fair Housing News announces two unsuspecting recipients of its Fair Housing Good Citizen Award. Tracy Davis Pierce and Lisa Locke are the editors of the classified advertising sections of the Chronicle of Barton and the Stowe Reporter respectively. Ms. Pierce and Ms. Locke each took the pro-active step of contacting the Vermont Human Rights Commission to obtain information about fair housing law so they could explain the law to individuals who wished to submit questionable rental advertisements. Congratulations to these two exemplary citizens!

Fair Housing 101 Training

The Vermont Human Rights Commission staff is available to speak with your group about the basics of Vermont's fair housing laws.

Vermont Human Rights Commission
800-416-2010
Or
802-828-2480
human.rights@state.vt.us

AROUND THE NATION

MICHIGAN APARTMENT OWNER PAYS \$725,000 TO SETTLE RACE DISCRIMINATION CASE

The owner of an apartment complex in Livonia, Michigan accused of refusing to rent to blacks because they "bring in trouble" reached a \$725,000 settlement with the U.S. Department of Justice in August.

Federal prosecutors allege that the owner told property managers not to rent to "people from Detroit" because they "bring in trouble, like drugs and other trouble." The Justice Department charged that the managers were told to keep quiet about available apartments and to demand a deposit if blacks wanted to apply. Prospective renters who were not black could apply with no deposit, the Department alleged. "Discrimination against those seeking access to fair housing on the basis of race is not only against the law, it is contrary to the societal norms that exist in 21st century America," said Stephen J. Murphy, U.S. Attorney for the Eastern District of Michigan.

Nearly half of the monetary settlement will go to 21 people who sought apartments at the complex. The remainder is earmarked as attorneys' fees and for a civil penalty. The settlement also requires the owner to use an independent property management company to handle the rental and application process. The settlement will be enforceable by court action for at least five years.

MINNESOTA LANDLORD TO PAY \$400,000 TO SETTLE SEXUAL HARASSMENT LAWSUIT

The U.S. Justice Department announced in August that a Minnesota landlord agreed to pay \$400,000 to settle allegations that he sexually harassed female tenants. The Justice Department alleged that the landlord, Ronald Bathrick, subjected female tenants to severe and unwelcome sexual harassment, including unwanted sexual advances and contact, conditioning terms and conditions of women's tenancies on the granting of sexual favors, entering the apartments of female tenants without permission, and taking adverse action against female tenants when they refused or objected to his sexual advances.

"No woman should be prevented from enjoying a safe and comfortable home because she is the victim of unwanted sexual advances by a landlord," said Wan J. Kim, Assistant Attorney General for the Justice Department's Civil Rights Division. Under the settlement agreement, Bathrick will pay \$360,000 to the alleged victims, plus a \$40,000 civil penalty to the United States. He is also required to hire an independent management company to manage his rental properties.

U.S. JUSTICE DEPARTMENT FILES DISABILITY RIGHTS COMPLAINT ALLEGING REFUSAL TO PROVIDE ADEQUATE PARKING SPACE

On May 1, 2007, the United States filed a complaint in federal court alleging that the owner of an apartment complex in Longview, Washington discriminated against a tenant on the basis of disability.

The lawsuit was filed on behalf of Freeman Price, an individual with diabetic neuropathy. The neuropathy substantially limits his ability to seat himself, rise from a sitting position, and maintain his balance. The complaint alleges that Mr. Price told the property owner that he had been unable to access his car in the complex parking lot due to inadequate space to open his car door. Mr. Price explained that, because of his disability, he needs to open his door fully to enter and exit his car. Mr. Price requested an accommodation of either parking in two spaces or having an accessible parking space. The owner denied Mr. Price's request. Shortly thereafter, Mr. Price parked his car across two spaces. The owner demanded that Mr. Price move his car or face eviction. Mr. Price persisted in his request and the owner sought to evict him.

The Justice Department complaint seeks an injunction and monetary damages against the owner.

MILWAUKEE LANDLORD PAYS \$50,000 TO SETTLE FAMILIAL STATUS CASE WITH U.S. JUSTICE DEPARTMENT

The U.S. Justice Department announced in September that it had reached an agreement resolving a housing discrimination lawsuit alleging discrimination by a Milwaukee landlord on the basis of familial status.

The lawsuit alleged that the property owner and managers refused to rent an apartment to a woman and her minor daughter, stating that children were not allowed. The property manager communicated the same prohibition to a tester posing as a mother of a young child, while a tester posing as a person searching for housing for her spouse and herself was told that an apartment was immediately available to her.

The settlement calls for training, a nondiscrimination policy, record keeping, and monitoring. Additionally, defendants will pay \$39,000 in damages to the complainants and \$11,000 in civil penalties to the United States. "The Fair Housing Act ensures that families searching for a place to live are protected from discrimination," said Rena J. Comisac, Acting Assistant Attorney General for the Civil Rights Division.

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AROUND THE NATION, *continued*

U.S. JUSTICE DEPARTMENT SUES MINNESOTA TOWNHOUSE OWNER FOR REFUSING TO ALLOW PSYCHIATRIC SERVICE DOG

A Minnesota developer and property owner faces a federal lawsuit alleging discrimination for refusing to rent a townhome to a woman in need of a service animal for a disability. The federal lawsuit against Bouquet Builders Inc. was filed by the U.S. Justice Department on behalf of Sarah and Jesse Wilder and their minor daughter.

Sarah Wilder has been diagnosed with major depressive disorder, attention deficit hyperactivity disorder and other medical conditions. Her treating psychologist prescribed the use of a service animal (a beagle). The complaint alleges the Wilders contacted Bouquet Builders to inquire about renting a townhouse. During an application interview, a representative of Bouquet Builders told the Wilders that there was a no-pet policy. The Wilders explained that their dog had been

prescribed as a service animal for Sarah Wilder's medical conditions. The complaint alleges that, despite the Wilders' explanation, Bouquet Builders refused to allow the Wilders to rent a townhouse if they intended to have any animal in the building. Sarah Wilder subsequently filed a complaint with the U.S. Department of Housing and Urban Development (HUD) alleging violation of the federal Fair Housing Act. HUD conducted an investigation and found that "reasonable cause existed to believe the defendants discriminated against the Wilders." The government filed the lawsuit in September, alleging that Bouquet Builders discriminated against the Wilders and refused to make reasonable accommodations in their rules and policies to afford a person with a disability equal access to an available opportunity. The suit asks the federal court to declare that the Bouquet policy violates the Fair Housing Act, and seeks a monetary award for the Wilders as compensatory damages.

This newsletter is supported by funds provided by the U.S. Department of Housing & Urban Development.

A Reader Asked . . .

Recently a Fair Housing News reader asked us why it is that we only publish results of charges when tenants win cases before the Vermont Human Rights Commission. That is a good question. When a tenant files a charge of discrimination, HRC investigates the charge and based on those findings makes a recommended determination of either "reasonable grounds" or "no reasonable grounds" to the Human Rights Commissioners. The Commissioners then conduct a hearing with both parties and, based on the information from the hearings and the investigative report, they determine if there are reasonable grounds to believe discrimination has occurred or not. If they determine that there are no reasonable grounds to believe that discrimination has occurred, that case is not public. This means that we cannot publish the facts of that case.

However, in an effort to help our readers understand the breadth of HRC's investigative work, here are some statistics regarding our fair housing cases.

Fiscal Year	Reasonable Grounds Cases	No Reasonable Grounds Cases	Mediated Settlements
2005	13	22	7
2006	0	13	2
2007	2	14	12

RECENT VERMONT FAIR HOUSING CASES

Since the last issue of Vermont Fair Housing News, four housing cases have come before the Vermont Human Rights Commission. One case resulted in a reasonable grounds finding and each of the other three cases were settled with a Pre-Determination Conciliation Agreement (PDCA). Three of the complaints involved discrimination against persons with minor children.

Housing Discrimination Project v. Rutland Herald

In this case, the Commission determined that The Rutland Herald illegally discriminated against people with minor children through rental advertising the paper published. The investigation revealed that over a period a time, the Herald had printed a number of ads that stated a preference for people without minor children. The ads included language such as "singles" and "no children." As reported in the Spring 2007 issue of Vermont Fair Housing News, the Times-Argus newspaper was also found to have discriminated in its advertising practices. Because both papers have the same owner, these cases were combined for purposes of settlement negotiations. As this issue goes to print, a final settlement has not yet been reached.

PDCA – minor children

This case involved a woman who was allegedly turned down for housing because she had minor children. The charge was filed against a private limited liability corporation. The case was settled through negotiations. The settlement agreement consisted of a private financial settlement to help cover the cost of the claimant's loss of Section 8 housing for several months. Additionally, one of the agents for the responding party agreed to attend fair housing training.

PDCA – minor children

The Vermont Human Rights Commissioners approved a PDCA in this case of alleged discrimination based on the presence of minor children in a household. This agreement was reached through the formal mediation process. The responding party was a private property owner. The claimant alleged that she was unable to purchase a mobile home because the mobile home park had occupancy limits that discriminated against people with children. Through the mediation process, the respondent in this case agreed to pay the claimant \$9000 to settle the case.

PDCA – race, color & religion

The charging party alleged discrimination by a housing authority based on her race, color, and religion. In this PDCA, reached through formal mediation, the parties agreed that the claimant would move to another dwelling and the housing authority would pay her \$3000.

GENDER IDENTITY IN FAIR HOUSING

In May 2007, Governor Jim Douglas signed into law a bill extending existing anti-discrimination laws to prohibit discrimination on the basis of gender identity in housing, employment, public accommodations, insurance and credit services. Under the new law, the phrase "gender identity" is defined as "an individual's actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual's gender or gender-identity, regardless of the individual's assigned sex at birth." Twelve other states and the District of Columbia provide similar protections.

The staff of the Vermont Human Rights Commission is available for information and educational presentations about this topic. The Commission can be reached, toll free, at 1-800-416-2010.

VERMONT FAIR HOUSING DIRECTORY

Below is a list of Vermont agencies and organizations that address fair housing issues.

STATE AGENCIES

VERMONT HUMAN RIGHTS COMMISSION

Robert Appel, Executive Director
14-16 Baldwin St.
Montpelier, VT 05633-6301
800-416-2010/802-828-2480 (voice)
877-294-9200/802-828-1493 (TTY)
www.hrc.state.vt.us
human.rights@state.vt.us

The Human Rights Commission investigates complaints of discrimination in housing, public accommodations, and employment by the State of Vermont.

VERMONT DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

John S. Hall, Commissioner
National Life Building, 6th Floor
Drawer 20
Montpelier, VT 05620
800-622-4553/802-828-3211
www.dhca.state.vt.us

The Department of Housing and Community Affairs monitors housing in Vermont, and administers programs to develop housing opportunities throughout the state. The Department, through its grants programs, works to affirmatively foster fair housing.

VERMONT STATE HOUSING AUTHORITY

Richard Williams, Executive Director
1 Prospect St.
Montpelier, VT 05602-3556
800-820-5119/802-828-3295
www.vsha.org

Vermont State Housing Authority is the largest provider of rental assistance in Vermont. It is also committed to preserving the housing assets that exist and increasing Vermont's stock of affordable housing.

FEDERAL AGENCIES

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) —OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

William Howell, Director
Boston Regional Office
Thomas P. O'Neill, Jr. Federal Building
10 Causeway St., Room 321
Boston, MA 02222-1092
800-827-5005/617-994-8300 (voice)
617-565-5453 (TTY)
www.hud.gov/offices/fheo/index.cfm

HUD enforces the federal Fair Housing Act, and provides enforcement and education grants to local fair housing agencies.

U.S. DEPARTMENT OF AGRICULTURE—RURAL DEVELOPMENT PROGRAM

Jolinda LaClair, State Director
City Center, 3rd Floor
89 Main St.
Montpelier, VT 05602
802-828-6000 (voice)
802-223-6365 (TTY)
www.rurdev.usda.gov/vt/

USDA Rural Development has several programs to assist with housing in rural areas, including loan programs for low-income home buyers and owners.

PRIVATE AGENCIES AND ORGANIZATIONS

COORDINATED STATEWIDE HOUSING SERVICES OF CVOEO

Ted Wimpey, Director
294 North Winooski Ave.
Burlington, VT 05401
800-287-7971/802-660-3451
www.cvoeo.org/htm/Housing/housing.html

CVOEO offers advice, advocacy and education for fair housing. CVOEO's helpful "Renting in Vermont" is available on-line at http://cvoeo.org/htm/Housing/tenants/Renting_in_VT.html

VERMONT CENTER FOR INDEPENDENT LIVING (VCIL)

Deborah Lisi-Baker, Executive Director
11 East State Street
Montpelier, VT 05602
800-639-1522/802-229-0501 (voice and TTY)
www.vcil.org
vcil@vcil.org

VCIL is a support and advocacy agency for people with disabilities. VCIL works on fair housing issues of concern to people with disabilities.

VERMONT LEGAL AID and DISABILITY LAW PROJECT

7 Court Street
Montpelier, VT 05601
800-889-2047
www.vtlegalaid.org

Vermont Legal Aid provides legal services to low-income Vermonters, including advocacy related to fair housing cases. Legal Aid's Disability Law Project provides legal services to Vermonters with disabilities.

VERMONT AFFORDABLE HOUSING COALITION

Erhard Mahnke, Coordinator
294 North Winooski Ave., Suite 109
Burlington, VT 05401
802-660-9484
erhardm@vtaffordablehousing.org

The Vermont Affordable Housing Coalition works to promote affordable housing in Vermont, and to remove barriers to accessing affordable housing throughout the state.

CONTACT US!

The Vermont Fair Housing News is published twice annually, in the spring and fall. Please contact us, if you would like to:

- ◆ Sign up for the mailing list
- ◆ Submit ideas for articles
- ◆ Give us feedback

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